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| 7590<br>Ryan, Mason & Lewis, LLP<br>90 Forest Avenue<br>Locust Valley, NY 11560 |             |                      |                     |                  |
| EXAMINER  |             |                      |                     |                  |
| PARKER, BRANDI P  |             |                      |                     |                  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/718,210

**Applicant(s)**

DUBE ET AL.

**Examiner**

BRANDI P. PARKER

**Art Unit**

3624

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 and 12-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date 2/4/2010
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Acknowledgements***

1. The following is a Final Office action in response to communications filed on 2/22/2010. Claims 1-10 and 12-18 are pending. Claims 1, 17 and 18 have been amended.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-10 and 12-18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5-10, 12, and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dietrich et al (US 6526392) in view of Keil et al (US 20030088457).

5. With respect to claims 1, and 17-18, Dietrich teaches
  - a. obtaining data associated with at least one potential demand for use of the one or more resources (column/line 4/17-20, regarding customer forecasted demand);
  - b. generating a management model in accordance with at least a portion of the obtained data, wherein the management model is operative to determine an allocation of the one or more resources based on combinations of price levels and service levels that may be offered to one or more users of the one or more resources so as to attempt to satisfy at least one management goal (column/line (2/45-317, regarding yield managed service contract pricing system based on pricing and service activity)
    - i. wherein the combinations are determined by computing a set of prices and a set of service levels to offer to the one or more users at each one of the prices in the set of prices, and wherein the set of prices and set of service levels are derived from: (i) levels associated with the one or more resources; (ii) historical demand data; and (iii) predicted demand data (column/line 4/27-40, regarding analyzing forecasted or historical demand for a profile of anticipated service activity);

- c. evaluating the satisfaction of the management goal for each combination associated with the management model (column/line 2/57-60, regarding the evaluation of the resource requirements using the service model);
- d. determining an optimal configuration of the one or more resources, in accordance with the management model; that maximizes the management goal, wherein the optimal configuration is determined by solving the management model using one of a linear programming solver and a nonlinear programming solver (column/line 8/8-21, regarding using linear programming for the optimal allocation method);
- e. controlling a usage load level of the one or more resources (column/line 1/48-67, regarding determining a range of prices based on the services contracted);
- f. wherein the steps are executed by one or more computers (column/line 1/56-2/67, regarding computer system to yield managed service contract pricing).

The computing resource component is anticipated by Dietrich because a service activity can include the transmission of information over a network (column/line 3/6-10). The resources in Dietrich can be used with the transmission of data and are not explicitly specified to be computer resources; however, it would have been obvious to

one with ordinary skill in the art to use the system in Dietrich with any type of resource related to services and yield management.

Dietrich does not directly teach modulating quantities of products offered to the one or more users of the one or more computing resources. However, Keil teaches (paragraph 0010 and paragraph 0060, regarding varying production amounts as well as attribute levels for products). Since each individual element and its function are shown in the prior art, albeit shown in separate references, the difference between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself- that is the substitution of modulating quantities of products offered to the one or more users of the one or more computing resources of Keil for the modulating of the combinations of price levels and service levels of Dietrich. Thus, the simple substitution of one known element for another producing a predictable result renders the claim obvious.

6. Regarding claim 2, Dietrich further teaches wherein the management model generating step further comprises determining the allocation also based on at least one of historical data and predicted data associated with a demand pattern (column/line 4/16-25, regarding forecasted demand).

7. As to claim 3, Dietrich further wherein the management model generating step further comprises determining the allocation also based on at least one of historical data

and predicted data associated with a resource usage level (column/line 7/55-61, regarding remaining resources or residual service network).

8. With respect to claim 5, Dietrich further teaches wherein the management model generating step further comprises aggregating at least one of historical data and predicted data associated with a resource usage level (column/line 4/34-40, regarding customer profile including total and historical demand).

9. Regarding claims 6, 7 and 8, Dietrich further teaches wherein the management model generating step further comprises setting price levels and service levels to be offered to users based on at least one of current data and predicted data and wherein the at least one of current data and predicted data comprises at least one of demand data and resource data (column/line 2/45-3/3, regarding the yield managed service contract pricing system for setting prices current activity and usage by customers).

10. As to claim 9, Dietrich further teaches wherein the setting step is also based on a maximum number of price-service-level combinations (column/line 4/66-5/3, regarding minimum and maximum contract pricing range).

11. With respect to claim 10, Dietrich further teaches wherein the management model generating step further comprises evaluating a revenue value for each price-service-level combination (column/line 1/48-52, regarding net profitability).

12. Regarding claim 12, Dietrich further teaches wherein the management goal is at least one of: (i) achieving a revenue goal; (ii) increasing a market share; (iii) responding to a competitor; and (iv) smoothing a demand pattern (column/line 9/63-10/2 regarding generating a pricing range based on competitors for a competitive bid).

13. As to claims 15 and 16, Dietrich teaches the method of claim 1, wherein the management model comprises a yield management model or revenue management model (column/line 1/48-52, regarding the yield managed contract pricing system that can manage overall net profitability or revenue).

14. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dietrich et al (US 6526392) in view of Laurent et al (US 2004/0249699).

15. Regarding claim 4, Dietrich teaches the method of claim 1. Dietrich does not directly teach representing the at least one potential demand as one of a demand curve and a discrete choice model. However, Laurent further teaches wherein the management model generating step further comprises representing the at least one potential demand as one of a demand curve and a discrete choice model (paragraph 0100 and 0103).



It would have been obvious to one of ordinary skill in the art to include the business system of Dietrich with the ability to teaches wherein the management model generating step further comprises representing the at least one potential demand as one of a demand curve and a discrete choice model as taught by Laurent since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

16. Claims 13 and 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dietrich et al (US 6526392) in further view of Fong, et al, "Dynamic Resource Management in an E-Utility".

17. As to claims 13 and 14, Dietrich teaches the method of claim 1. Dietrich does not directly teach where the resource comprises an electronic utility. However, Fong, et al teaches wherein one or more computing resources comprise an electric utility.

It would have been obvious to one of ordinary skill in the art to include the business system of Dietrich and Laurent with the ability to teach resources comprising an electric utility as taught by Fong, et al since the claimed invention is merely a combination of old elements, and in the combination each element merely would have

performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

### ***Conclusion***

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

19. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **BRANDI P. PARKER** whose telephone number is (571) 272-9796. The examiner can normally be reached on Mon-Thurs. 8-5pm.

21. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

22. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRANDI P PARKER/  
Examiner, Art Unit 3624

/Romain Jeanty/  
Primary Examiner, Art Unit 3624  
May 23, 2010